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GARY J. WESTON
Executive Director

October 13, 1998

Magalie Roman Salas
Commission's Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: Ameritech/SBC
Case No. 98-141

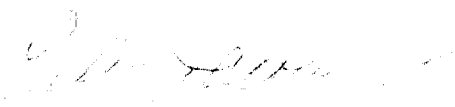
Dear Ms. Salas:

Enclosed please find 15 copies of the Petition/Comments of the Edgemont Neighborhood Coalition I wish to file in the above captioned case

I am enclosing a self-addressed envelope if you would be so kind to return any extra file-stamped copies to me.

Thank you in advance for your time in this matter

Yours,


Ellis Jacobs
Attorney at Law

EJ:bt

Enc.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of	*	
AMERITECH CORP.,	*	CC Docket No. 98-141
Transferor,	*	
	*	
AND	*	
	*	
SBC COMMUNICATIONS INC.,	*	
Transferee	*	
	*	
For Consent to Transfer Control of	*	
Corporations Holding Commission Licenses	*	
and Authorizations Pursuant to Sections	*	
214 and 310(d) of the Communications	*	
Act and Parts 5, 22, 24, 25, 63, 90, 95 and	*	
101 of the Commission's Rules		

PETITION/COMMENTS

OF THE

EDGEMONT NEIGHBORHOOD COALITION

I. INTRODUCTION

The Edgemont Neighborhood Coalition ("Edgemont") hereby files its Petition/Comments in this proceeding pursuant to the Federal Communications Commission ("Commission" or "FCC") *Order* of September 1, 1998 in this case.

II. EDGEMONT

Edgemont is a community organization based in a low-income African American neighborhood in the City of Dayton, Montgomery County, Ohio. The organization is a nonprofit corporation dedicated to improving economic opportunity and the quality of life for residents of the

Edgemont neighborhood. Edgemont operates a urban gardening project, a storefront office, and "Edgenet", a community computer center.

Edgemont has long been concerned with utility matters and since 1993 has intervened in many telecommunications cases and dockets before the Ohio Public Utilities Commission (PUCO) and has participated in Universal Service proceedings before the FCC.

III. THE STANDARD FOR REVIEW

Rather than demonstrate how the acquisition will promote the public interest, as it must, SBC and Ameritech have presented their local/national strategy, an inventive account of how this merger might trigger a series of events that might ultimately advance the public interest.

This hypothesizing falls woefully short of demonstrating how the public interest will be served. Based on this application, Edgemont petitions the FCC to deny SBC's acquisition of Ameritech.

What are the types of demonstrations which might justify approval?

Certainly, concrete steps to open-up Ameritech's captive residential market up to competitors would be important. Potential competitors can be far more specific than Edgemont can about what is needed. That is not enough, however.

The viability and success of competition in the residential market place is by no means assured. It may happen soon, or in the distant future. Its benefits may be widespread, or limited to certain subsets of the market. If recent experience has taught us anything about the performance of this market it is that only uncertainty is certain.

That being the case, these companies can not demonstrate that they are furthering the public interest solely through facilitating competition. They must also demonstrate direct benefits to the

public. What follows is a nonexclusive and very preliminary list of the type of direct benefits which should be demonstrated by this application.

1. The economic benefits of this merger must be shared with rate payers. Applicants claim that this merger will result in significant "efficiencies" The Commission needs to determine the actual amount of the economic benefit from this acquisition and an equitable apportionment of those benefits.

2. Ohioans must benefit from the increased investment capacity of a combined company. Ohio needs investment in a modern broadband network. Just as development used to spring-up on the banks of rivers and lakes. Now, the location of development is greatly influenced by the presence or lack of broadband infrastructure

The FCC must insure that SBC invests in Ohio and the other Ameritech states. Right now the FCC is wrestling with how it should implement the Telecommunications Act Section 706 requirement that it "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans..." *Notice of Inquiry*, CC Docket 98-146, August 6, 1998. Requiring such investment as a condition of this merger is one way, and a very effective way at that, of meeting the statutory requirement

3. There must be assurances that there will be no redlining. Investment must be made in an equitable way, so all communities benefit. This concern for equity is mandated by Section 706 and is a constant theme throughout the 1996 Telecommunications Act.

There is good reason to be concerned that investment might bypass minority and low income neighborhoods. An analysis in 1994 by a coalition of consumer and civil rights organizations of video dial tone applications to the FCC by Regional Bell Operating Companies found that those

applicants proposed to bypass many lower-income and/or minority communities in their initial deployment of video dial tone, while serving areas contiguous to those communities.¹

The development pattern of Ohio's metropolitan areas will provide ample incentive for other telecommunications companies to make similar investment decisions if they are allowed to.

An excellent report by the Ohio Housing Research Network contains an in-depth analysis of these development patterns.² The report shows that for every city in Ohio the suburbs (both inner and outer) are far wealthier (as measured by 1990 household income) than the cities they surround.³ For example, the most extreme disparity was found in the Cleveland area where the average income in Cleveland was \$23,144, in the inner suburbs it was \$40,484, and on the edges of Cuyahoga County it was \$52,401. More typical was the Dayton area where city income was \$24,563, inner suburb income was \$39,742, and on the edges of Montgomery County it was \$44,514.⁴ The report found that the incomes in these outlying neighborhoods were also growing faster than incomes were growing in the cities.⁵

¹Petition for Relief of Center for Media Education et. al., In the Matter of the Petition for Relief from Unjust and Unreasonable Discrimination in the Deployment of Video Dial Tone Facilities; Federal Communications Commission, May 23, 1994. at I. Edgemont understands that as a result of changes in the law no companies are pursuing video dial tone applications. Those applications are cited here only illustrate the danger that urban and minority communities will be excluded.

²The Ohio Housing Research Network, Moving Up and Out: Government Policy and the Future of Ohio's Metropolitan Areas, September 19, 1994.

³Id. at table 5, p. 11.

⁴Id.

⁵Id.

Further, the number of households located in these areas is skyrocketing.⁶

For example, while Toledo experienced a 1.6% decline in the number of households between 1980 and 1990 its inner suburbs grew by 20.4% and the outer edges of Lucas County grew by 13.1%. This was typical of the other Ohio metropolitan areas.⁷

The relative growth of these areas is not restricted to residential growth.

The rate of growth in the assessed value of commercial and industrial property in most outlying areas surpassed the rate of such growth in the associated central city.⁸ Cleveland, which has seen a downtown building boom still illustrates this trend. Between 1983 and 1991 the value of commercial property in the city increased by 48.3% (to \$1,570,833,200) the value in the inner suburbs increased by 23.7% (to \$1,491,491,340) and the value in the outer edges of Cuyahoga County soared by 65.8% (to \$1,218,013,330).⁹ Industrial property value in that period declined by 20.7% in the city, declined by 12.3% in the inner suburbs but increased by 8.4% on the edges of the county.¹⁰

With higher household incomes and more residential, commercial and industrial growth than in the cities, SBC will be tempted to install broadband infrastructure to serve these highly lucrative markets which encompass the areas a little to the north, south, east and/or west of Ohio's cities but which exclude those cities. The Ohio Housing Research Network's report shows that every Ohio city is vulnerable.

⁶Id.

⁷Id.

⁸Id. At table 6, p. 13.

⁹Id.

¹⁰Id.

To demonstrate furtherance of the public interest, SBC and Ameritech should be required to show reasonable plans for equitably investing in Ohio's infrastructure and, since low income communities may need assistance in using telecommunications infrastructure and technology to achieve educational and economic development, they should also show how they will help those communities take advantage of that technology

4. An application must demonstrate a commitment to universal service.

Universal service is a cornerstone of telecommunications policy in America. 47 U.S.C. §254. Promoting universal service is also the policy of the state of Ohio. O.R.C. §4927.02. Access to a telephone is essential for self-sufficiency. The more households that have telephone service, the more valuable such service becomes to each household. Universal service issues relate to all of the statutory standards applicable to the proposed merger

Unfortunately, telephone penetration remains a problem in low income communities throughout Ohio. In 1997 penetration rates were slightly lower than the rates for the banner year of 1990. Federal Communications Commission, *Telephone Subscribership Report*, January 1998. Approximately 200,000 households in Ohio do not have telephones.*Id.* This is more than the total number of households in Cleveland (199,787). Bureau of the Census, *Statistical Abstract of the United States*, 1994. Phonelessness is concentrated in households with incomes under \$20,000. A significant number of these phoneless homes are in the Ameritech service territory.

Neither Ameritech or SBC have good records on enrolling people in federal and state programs designed to make telephone service affordable for low incomes families.¹¹ Indeed, the

¹¹For purposes of the Commission's review of SBC's attitude toward assisting low-income customers, it would be inadequate to merely hear from SBC on what the various statutes or rulings in its region require for assistance programs. The Commission must

Commission has required Ameritech to show why it is not in breach of the Universal Service Assistance ("USA") agreement that Ameritech made with consumer parties, including Edgemont, in the Ameritech Alt Reg Case. *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an alternative Form of Regulation*, Case No. 93-487-TP-ALT, Entry at ¶5 (October 6, 1997).

Professor Harry Trebing has stated that, as companies such as ILECs get larger, "profit opportunities from foreign expansion or conglomerate diversification can result in a denigration of basic service and network disinvestment." "Identifications and Regulatory Treatment of Market Power," 1997 NARUC Regulatory Studies Program in Michigan, Outline at p. 12. In such an environment, the curtailment of already weak universal service efforts is a likely outcome. Such a conglomerate's search for ever greater profit opportunities is an inappropriate distraction from such essential objectives as getting and keeping low-income households on the network.

This application can only demonstrate that it advances the public interest in this area if it details a plan to significantly reduce phonelessness

5. Applicants must insure improved service quality. Ameritech has had service quality problems. *Finding and Order*, Case 95-711-TP-COI (June 26, 1997). SBC is also facing service quality complaints and the California Public Utilities Commission recently indicated that the number of service quality complaints in California has skyrocketed. *Order Instituting Rulemaking*, R. 98-06-029 (June 18, 1998).

SBC and Ameritech are well aware that the above listed benefits are just the sort of direct

look behind the laws and rulings to ascertain what role SBC played, through its lobbying and other advocacy, in the creation of regulations that may limit low-income assistance and/or enrollment.

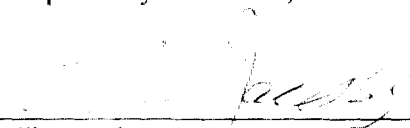
public benefits which are sought in merger cases. SBC's recent acquisition of Pacific Telesis resulted in public benefits in all of these areas. By agreement or Commission order that merger was contingent upon:

- a. Over \$200 million in rate relief.
- b. \$50 million to create an independently administered Community Technology Fund to provide access to and education in the use of advanced telecommunication services in underserved communities. (See attached, *Fact Sheet on Pacific Telesis Commitments*).
- c. Efforts to achieve 98% telephone service penetration in low income, minority, and limited English speaking communities. *Id.*
- d. The creation of 1000 new jobs in California.

Order Denying Rehearing and Modifying D.97-03-067, Public Utilities Commission of California, November 5, 1997. (Attached)

The FCC must require a clear advancement of the public interest now, before any merger is approved. The existing application falls way short. In the absence of commitments and conditions of the type discussed above, this merger should be denied.

Respectfully submitted,



Ellis Jacobs
Attorney for Edgemont Neighborhood Coalition
Legal Aid Society of Dayton
333 West First Street, Suite 500
Dayton, OH 45402
(937) 228-8088

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition/Comments of the Edgemont Neighborhood Coalition was mailed by ordinary U.S. Mail this 14 day of October, 1998 to the following parties:

Magalie Roman Salas
Commission's Secretary
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Chief
Commercial Wireless Division
2100 M Street, N.W., Room 7023
Washington, D.C. 20554

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Ellis Jacobs

Jeanine Poltronieri
Wireless Telecommunications Bureau
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FACT SHEET
on
PACIFIC TELESIS COMMUNITY COMMITMENTS

Telecommunications markets are changing dramatically due to greater competition and advances in technology. As Pacific Telesis moves to address these changes, it is making commitments to local communities to assure that *all* their citizens will have access to telecommunications services that will revolutionize the way we work, learn and live.

On October 15, 1996, Pacific Telesis announced the following commitments for California communities:

COMMITMENT TO A COMMUNITY TECHNOLOGY FUND

- Establish a \$50 million "Community Technology Fund" to give underserved communities greater access to advanced telecommunications services. The fund will be governed by a committee of community, public interest and telecommunications industry representatives for 10 years.
- Challenge all providers of telecommunications in California to contribute to the Community Technology Fund; Pacific Telesis will contribute an additional \$3 million each year for nine years, beginning three years after the merger is completed, if other providers' contributions match or exceed the Pacific Telesis challenge.
- Support, through the fund's committee in each of the fund's first three years, awards of \$1.5 million to projects supporting underserved communities that *don't* involve telecommunications.

COMMITMENT TO COMMUNITY SUPPORT

- Increase its corporate and foundation grants and gifts budget by \$1 million to assist education, job development, economic development and social service programs in underserved communities; the increase will remain in the budget for three years to be earmarked for grants to entities serving these communities.

COMMITMENT TO ETHNIC MARKETS

- Study underserved communities and consult with community leaders on providing basic and advanced telecommunications services to these markets.
- Expand multilingual services to meet customer needs.

COMMITMENT TO UNIVERSAL SERVICE

- Make a good faith effort over the next seven years to help California move toward a 98 percent telephone service penetration in low income, minority and limited-English-speaking communities.
- Form a *Universal Service Taskforce* with community leaders to address ways to increase the penetration of basic and advanced communications services.

COMMITMENT TO WORKFORCE DIVERSITY

- Continue its good faith efforts toward achieving a diverse workforce at all levels of management that reflects California's labor pool of available and qualified persons; Pacific Bell will foster business practices that support diversity in community and vendor relations and seek to be the state's telecommunications leader in awarding contracts to qualified and competitive minority vendors.

COMMITMENT TO ENHANCE TECHNOLOGY

- Provide customers with increasingly sophisticated telecommunications technologies to keep California a national leader, and to encourage universal design concepts to improve accessibility of telephone equipment and services to persons with disabilities.

COMMITMENT TO COMPANY ACCESS

- Ensure access by community and public interest groups to the newly-merged company, Pacific Bell will assign specific "ombudsmen" to respond to complaints and problems raised by these groups; access to SBC will also occur through an officer appointed to the Pacific Telesis and Pacific Bell boards of directors.

COMMITMENT TO CREATE JOBS

- Create at least one thousand new California jobs and report progress on employment growth to the California Public Utilities Commission after two years.

**Pacific Telesis Community Partnership Commitment and Proposal for
Settlement of Pending SBC/Pacific Telesis Merger Proceeding**

PREAMBLE

Pacific Telesis' Commitment to Leadership

Emerging technologies and competition are driving extraordinary changes in today's telecommunications markets. Pacific Telesis believes technology and competition should serve the greater needs of society, advancing our ability to make the connections that enhance our daily lives.

Pacific Telesis intends to lead the way with technological and service innovations that enhance the way our customers communicate. Pacific Bell intends to strive to be the industry leader among telecommunications companies in serving low-income seniors and low-income, inner-city, minority, disability and limited-English speaking communities (underserved communities). In particular, we're concerned that all Californians, particularly underserved communities, have access to telecommunications services as they exist today and as they are evolving into advanced voice, data and video networks that can revolutionize the way people work, learn and live.

This Commitment must be placed in the context of the unprecedented changes in the telecommunications industry. The monopoly era is dead. Pacific Telesis is entering an era of dynamic uncertainty. No one company has the ability to change the way in which telecommunications will be provided to California. But Pacific Telesis and Pacific Bell have been and intend to continue to be the leaders in bringing telecommunications services to California, including California's underserved communities.

CUSTOMER SERVICE, ETHNIC MARKETS AND COMMUNITY SUPPORT

Following the merger, Pacific Telesis intends to maintain or improve the quality of service to customers in California, to expand service to ethnic and disability markets, and to build communication bridges to Mexico, Latin America and the Pacific Rim countries. Moreover, Pacific Telesis intends to maintain its commitments to diversity in the workforce and to continue charitable contributions and community support that Pacific Telesis, its subsidiaries and foundation have provided to California.

The Pacific Bell marketing organization intends to continue to study underserved communities and will consult with the Universal Service Taskforce (see section below) on providing basic and advanced services to these communities.

Pacific Bell also intends to continue to provide all current multilingual services and to expand those services and add services in additional languages as needed to meet customer needs. Pacific Bell also intends to provide multilingual billing and other customer materials where necessary to facilitate serving Pacific Bell customers.

Pacific Bell intends to be a leader in California on issues affecting the economic growth of underserved communities, such as job development and small business development. In addition, Pacific Telesis and Pacific Bell believe in the importance of philanthropic investments to assist underserved communities in areas such as education, job development, economic development and key social services. Pacific Bell intends to make such investments a principal focus of its foundation and corporate grants and gifts.

Moreover, Pacific Bell intends to increase its budget for corporate and foundation grants and gifts (as compared to its 1996 budget) by one million dollars beginning with the first full calendar year following the closing of the merger between Pacific Telesis and SBC Communications. Pacific Bell agrees to maintain that increased budget for three years, resulting in a total increase in funding of three million dollars. The incremental increase will be earmarked for grants to entities supporting underserved communities.

At the end of the third year of increased funding and for each year thereafter for the term of this Commitment, Pacific Bell shall consider in good faith the feasibility of maintaining funding at the increased level.

LEADERSHIP IN UNIVERSAL SERVICE

Although with the advent of competition Pacific Bell is no longer the sole provider of local communications service in California, Pacific Bell remains deeply committed to improving the availability of basic and advanced telecommunications services to underserved communities throughout the state. Pacific Bell intends to maintain its leadership position in enhancing the availability and penetration of telecommunications services and will make a good faith effort toward helping California achieve 98 percent penetration in low-income, minority and limited-English-speaking communities within the next seven years. Given the advent of competition, however, Pacific Bell's efforts to achieve increased penetration cannot succeed without the complete commitment of the other providers of telecommunications services in California. Pacific Bell intends to lead the industry effort in this respect.

Pacific Bell will form a Universal Service Taskforce to work in partnership with community leaders in assessing methods for improving the penetration of basic and advanced communication services and removing barriers to universal service. The taskforce will include signatories to this Commitment, Pacific Bell representatives and other members of the public interest community agreeable to the signatories. The taskforce will be charged with the following responsibilities: developing recommendations that will help move California toward 98 percent telephone penetration in low-income, minority and limited-English-speaking communities within seven years; reviewing all aspects of lifeline service; studying language and physical barriers to universal service; and recommending methods for measuring penetration within the disability community. The taskforce also will be responsible for integrating all existing Pacific Telesis and Pacific Bell universal service and phone penetration agreements into its efforts.

Pacific Bell will provide reports to the taskforce on regulatory, policy, technology and other issues affecting basic and advanced communications services and barriers to universal service. The taskforce will communicate in writing with the Pacific Bell board on an as-needed basis and will meet with the board once each year.

Pacific Bell officers will participate in an annual community forum during which the taskforce will present a universal service status report to a broad array of community leaders.

Pacific Bell expenses associated with the taskforce (except Pacific Bell employee salaries) shall not extend beyond seven years from the date of this Commitment and shall not exceed \$100,000 annually for each of those seven years.

Pacific Bell Community Technology Fund

Over the last several years, the Telesis Consumer Advisory Panel and community leaders have proposed the establishment of a fund to address universal service and to give underserved communities access to advanced telecommunications services. To demonstrate its support, Pacific Bell will establish a fund managed jointly by a broad-based committee of community and public interest group leaders, technology experts, Pacific Bell and other telecommunications industry contributors to the fund. "Public interest groups" are those groups and organizations described in Section 1802 (b) of the Public Utilities Code.

Elements of the fund:

Size, structure and name. Pacific Bell will pay to the fund up to \$5,000,000 per year for ten years. If Pacific Bell contributes less than \$5 million to the Fund in any of the ten years, then the excess of \$5 million over the amount contributed by Pacific Bell in that year can be carried over to increase the amount to be contributed by Pacific Bell in the subsequent years. Pacific Bell's total contribution will not exceed \$50 million (excluding any contributions made pursuant to the "Pacific Bell Challenge" described below).

The fund will be governed by a committee selected and agreed to by all of the signatories to this Commitment. Pacific Bell will provide staff support and, together with other telecommunications industry contributors, will have representation on the governing board. Representatives of community and public interest groups will form a majority of the committee. If Pacific Bell is the sole industry participant in the fund, the fund will be identified as the Pacific Bell Community Technology Fund.

Purpose. Its focus will be to advance universal service principles and to provide underserved communities with access to and education about emerging and advanced telecommunications. The committee will define and implement a program of community technology partnerships that will include program design, establishing funding guidelines and eligibility requirements, short- and long-term grantmaking, funding for technical support (if required), and follow-up analysis and publication.

The committee will be charged with identifying and responding to the needs of underserved communities. The committee also will be charged with reviewing the effects of competition on underserved communities in California.

Membership. Committee members will represent different geographic, ethnic, racial, urban, rural, senior and disability constituencies. Committee members shall include persons representing the signatories to this Commitment, persons representing telecommunications providers who contribute to the fund in response to the Pacific Bell Challenge described below, and other persons representing community and public interest groups who are agreed to by all of the signatories to this Commitment. Community and public interest group members could be compensated from the fund for expenses and an honorarium, if that is the wish of the committee.

Spending. Funds may be used for telecommunications network infrastructure, communications services, hardware or customer premises equipment, universal design applications, related training, technical assistance, consumer advocacy, consumer leadership and education efforts, research unit activities and to fund the administrative costs. Administrative costs shall not exceed five percent of the grants awarded on an annual basis. Administrative costs include committee member expenses and honorariums, if any, and Fund staffing and operations expenses. Grants awarded for the purpose of consumer advocacy may not be used to assert positions which, in the judgment of any signatory to this Commitment, are adverse to such signatory's interests.

During the first three years, the committee shall award \$1.5 million annually in grants to entities supporting underserved communities for projects that do not involve telecommunications.

The committee shall consider the following criteria in funding projects: relevance to the purpose of the fund, community support for the project, lasting benefit to the community, capability of the applicant to use the technology or service provided, accountability of the applicant in providing the service to the community, a carefully considered application and work plan, the cost-effectiveness of the project, applicant's management capability and control of the project and whether or not the project could be undertaken without assistance from the fund. All projects shall be sensitive to the needs of disabled consumers and focus on underserved communities.

To the extent that funds are used to acquire services and products from telecommunications providers, those services and products will, whenever possible, be acquired from Pacific Bell and other industry contributors to the fund in proportion to their contributions.

Think tank. State and federal laws are transforming the telecommunications industry by encouraging greater competition among all industry participants. Neither Pacific Bell nor any other industry participant can predict how the new competitive marketplace will unfold.

In this new environment, consumer and public interest groups can more effectively serve their constituencies if they have access to quality research. Accordingly, the committee shall establish a research unit designed to serve as a consumer-oriented "think-tank." The research unit shall be non-partisan, independent and not aligned with any telecommunications provider or signatory to this Commitment. The committee shall earmark sufficient funds to allow the unit to conduct ongoing research studies which address the vital interests of underserved communities and the general public in the evolving competitive environment.

The research unit shall be university-based, and research studies will be distributed to consumer and public-interest groups. Where appropriate, the committee may fund conferences, seminars and other educational sessions aimed at increasing understanding of the competitive environment among the general public and consumer and public interest group leaders.

Funding for the research unit and associated educational efforts shall be contributed by Pacific Bell in addition to Pacific Bell's \$5,000,000 annual contribution to the Community Technology Fund. Pacific Bell's contribution to fund the research unit shall not exceed \$200,000 per year for five years. Following this five-year period, funding may be continued at the discretion of the committee from the funds of the Community Technology Fund provided that such discretionary funding shall not exceed two percent of the annual contribution to the Community Technology Fund.

Reversion. Any amounts remaining in the Fund on the fifteenth (15th) anniversary of Pacific Bell's first contribution to the Fund shall revert to Pacific Bell.

A Challenge To The Industry

Pacific Telesis believes that a long-term commitment from the entire telecommunications industry is needed in this effort. Therefore, Pacific Telesis will make a challenge pledge to all providers of telecommunications in California to contribute to the Community Technology Fund.

Pacific Telesis offers to contribute an additional \$3 million to the Fund each year for nine years commencing three years following consummation of the Pacific Telesis/SBC merger (the "Pacific Bell Challenge"), provided that other California telecommunications providers make commitments during those three years which in the aggregate match or exceed the Pacific Bell Challenge. If other telecommunications providers fail to meet the Pacific Bell Challenge, Pacific Bell will nonetheless contribute over the nine-year period an amount that matches whatever amount other providers commit to contribute during the three-year period. If other telecommunications providers fail to match the Pacific Bell Challenge within three years, Pacific Bell promptly will urge the Commission to institute a proceeding to determine how best to achieve the objectives sought by this section of the Commitment.

LEADERSHIP IN WORKFORCE DIVERSITY

Pacific Telesis has an outstanding record with respect to workforce diversity. The Company's employment of racial and ethnic minorities has risen substantially over the past decade despite a volatile telecommunications industry. The Pacific Telesis workforce is 56.6 percent female and 42.2 percent minorities. This compares to a California workforce that is 43.8 percent female and 43.2 percent minority.

Pacific Telesis intends, consistent with the new competitive environment, to continue to be a California leader in the employment and advancement of women and minorities throughout its management ranks. Pacific Telesis also intends to continue its efforts to employ and promote qualified people with disabilities. In addition, Pacific Bell will continue its good faith efforts toward further achieving a diverse workforce at all levels of management that reflects California's labor pool of available and qualified persons with the requisite skills.

Moreover, Pacific Telesis is committed to fostering business practices that support and value diversity in community and vendor relations, with the intent of providing equal opportunity and creating economic development among populations that need it most.

In 1995, Pacific Bell made 24 percent of its purchases from businesses owned by minorities, women or disabled veterans. Following the merger, Pacific Bell intends, consistent with the new competitive environment, to make a good faith effort to be the California telecommunications industry leader in awarding contracts to qualified and competitive minority vendors.

TECHNOLOGY LEADERSHIP

Pacific Telesis has focused on providing Californians a modern telecommunications infrastructure with particular emphasis on advanced networks for voice, data and video services through both wireless and land-line technologies. The Company intends to provide customers with increasingly sophisticated telecommunications technologies to keep California a national technology leader.

Pacific Telesis intends to continue its efforts to make telephone equipment and services accessible to people with disabilities by encouraging telecommunications vendors and Pacific Telesis technology design and research groups to use universal design concepts in the development of technologies and products

EXTERNAL AFFAIRS

Pacific Bell has a long tradition of working with community leaders who represent the political, social, racial, ethnic, disability, cultural and linguistic diversity of California.

To ensure that California community and public interest groups have access to the newly merged company, external affairs managers from Pacific Bell will be dedicated to these groups to discuss service and policy issues, serving as ombudsmen for complaints and problems that are raised by these groups. Pacific Bell also will maintain both its internal Ombudsmen Office for employee concerns and its Regulatory Informal Appeals Group for escalated consumer complaints.

In addition, SBC has agreed to appoint an officer to serve on the Pacific Telesis and Pacific Bell boards of directors. Community and public interest groups will have access to SBC through this officer.

JOBS IN CALIFORNIA

Pacific Telesis understands the anxiety over job retention and growth that can arise when two major businesses merge. This merger is a job-growth agreement. To show confidence and good faith, Pacific Telesis agrees to the following:

- * The headquarters for Pacific Bell and Nevada Bell will remain in California and Nevada, respectively. In addition, a new company headquarters will be established in California that will provide integrated administrative and support services for the combined companies. Three subsidiary headquarters will also be established in California. These subsidiaries are long distance services, international operations and Internet.
- * The merged companies commit to expanding employment by at least one thousand jobs in California over what would otherwise have been the case under previous plans if this merger had not occurred. The merged companies will report their progress to the CPUC within two years.

CONSTRUCTION

Nothing in this Commitment shall be interpreted to require Pacific Bell or Pacific Telesis to give any preference or advantage based on race, creed, sex, national origin, sexual orientation, disability or any other basis in connection with employment, contracting or other activities in violation of any federal, state or local law. Nothing herein shall be construed to establish or require quotas or timetables in connection with any undertakings by Pacific Bell or Pacific Telesis to maintain a diverse workforce, contract with minority vendors, or provide services to underserved communities.

PARTNERSHIP COMMITMENT

This Commitment is a ten-year partnership and commitment to the underserved communities of California. In furtherance of this partnership, Pacific Bell is undertaking an obligation to the Community Technology Fund that may extend over a decade or more as well as a seven-year commitment to the Universal Service Task Force. The other provisions of this Commitment shall be effective from the date of execution until that date which is five years after the date of closing of the merger of Pacific Telesis and SBC.

COMMITMENTS OF THE SIGNATORIES

The parties to this Commitment believe that the benefits of this Commitment, together with other benefits of the merger as set forth in the application and the filed testimony of Pacific Telesis and SBC, fully satisfy the requirements of Section 854(b) of the Public Utilities Code, if applicable. The community and public interest groups that are parties to this Commitment will therefore support approval of this Commitment at appropriate hearings and by other means. It is understood that the obligations of Pacific Telesis and Pacific Bell under this Commitment are contingent upon the closing of the merger. In addition, Pacific Telesis and Pacific Bell shall be relieved of the obligation to make all monetary contributions set forth in this Commitment in the event the Commission determines that additional or different financial obligations are necessary to satisfy the requirements of Section 854(b).

COUNTERPARTS

This agreement may be executed in counterparts and shall be binding as to each signatory as of the date executed by such signatory.

SO AGREED:

Date: 1-14-96

PACIFIC TELESIS GROUP

By: Philip J. Quigley
Philip J. Quigley
Chairman, President and
Chief Executive Officer

Decision 97-11-035

November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Pacific Bell Telesis Group (Telesis) and SBC Communications, Inc. (SBC) for SBC to Control Pacific Bell (U 1001). Which Will Occur Indirectly as a Result of Telesis Merger With a Wholly Owned Subsidiary of SBC, SBC Communications (NV) Inc.

Application 96-04-038
(Filed April 26, 1996)

ORDER DENYING REHEARING AND MODIFYING D.97-03-067

This order denies in part the petition for modification filed by the Commission's Office of Ratepayer Advocates (ORA) and the application for rehearing of Decision (D.) 97-03-067 filed by The Utility Reform Network (TURN) and partially grants the requests for modification included in TURN's and ORA's applications.

BACKGROUND

In D.97-03-067, we approved the merger of Pacific Telesis Group (Telesis) and SBC Communications, Inc. (SBC). As part of our evaluation of the effects of the merger, we determined that the total forecasted long-and short-term economic benefits approximate \$495 million.¹ Pursuant to the requirements of Section 854(b)(2) of the California Public Utilities Code, therefore, we allocated 50 percent, approximately \$248 million, of the forecasted benefits to the ratepayers.² Of that amount, \$213 million shall be distributed to ratepayers in the form of billing surcredits over a period of five years. The remaining \$34 million (the net present value of \$50 million) is to be allocated to

¹ We noted in Finding of Fact No. 51 that the merger, and the conditions we are imposing in our approval of it, "will create benefits for California ratepayers and the California economy that are in addition to those which are estimated herein pursuant to ... [section] 854(b)." (D.97-03-067, p. 101.)

² Unless otherwise indicated, all statutory references hereinafter shall be to the California Public Utilities Code.

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ratepayers by Pacific Bell over a period of 10 years through Community Technology Fund which is to be established as part of the Community Partnership Commitment (CPC) agreed to by Pacific Bell, Telesis, and over 130 community-based groups and several individuals associated with non-profit and educational organizations. (Sec D.97-03-067, pp.86-87.)³ Pacific Bell will provide \$50 million over 10 years (i.e., the net present value of which is \$34 million) to the Community Technology Fund, as described in the CPC, to expand and modernize the network infrastructure and extend access to advanced telecommunications services to a broad spectrum of the State's population. (D.97-03-067, p. 103, Conclusion of Law No. 9.)

TURN in its application for rehearing of D.97-03-067 does not object to the source of funding for the CTF. Rather TURN urges the Commission to modify the decision to reform the administration and operation of the CPC in order to avoid legal error. The modifications TURN seeks are the following: (1) prohibit Pacific Telesis, or any other utility, from any involvement in the choice of the disbursements committee members or any representation on the disbursement committee itself for the purpose of CTF, the \$3 million additional grants, and the \$1 million "think tank" project. (2) remove the restriction on advocacy and the "company store" provision from the CPC, and (3) make the selection of disbursement committee for the CTF open to representatives of any group representing the interests of ratepayers or particular communities.

ORA's petition of D.97-03-067 is essentially a reiteration of its position with respect to the CPC and its funding in that the CPC can not constitute an economic benefit to ratepayers and hence must be funded by shareholders of Telesis and SBCS. No other party explicitly supports this view of ORA. However, should the Commission decide to uphold its decision regarding funding of the CTF, ORA seeks to modify the CPC by transferring control and supervision of administration of the CPC to the Commission similar to the California High Cost Fund (CHCF) and the Universal Lifeline Service

³ We have attached hereto a list of the organizations and various civic entities which are signatories to the CPC at present.

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(ULTS) programs. In the latter, ORA raises essentially the same concerns as TURN with respect to administration of the CPC. The issues raised by ORA are substantively related to the issues raised by TURN. We therefore shall consider ORA's petition for modification and address its requests with TURN's rehearing application in this order.

The Utility Consumers' Action Network (UCAN) filed a joint response supporting both TURN's application and the ORA's petition. UCAN support of these applications, however, is focused on its objection to the certain terms of the CPC, rather than the funding source of the CTF. In this respect UCAN states that the Commission, not Pacific Bell, should disburse and administer the CPC funds inasmuch as the fund is charged to ratepayers. Secondly, UCAN urges that the disbursement of ratepayer funds must be accomplished in a manner that does not provide undue preference to any signatory or participant to the CPC.

Responses opposing TURN's application and ORA's petition were filed by many of the signatories to the CPC, including Greenlining Institute and the Latino Issues Forum, and by Public Advocates, Inc. on behalf of the Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Association of Mexican-American Educators, California Association for Asian-Pacific Bell Bilingual Education, California Association for Bilingual Education, Korean Community Center of the East Bay, Filipinos for Affirmative Action, Filipino Civil Rights Advocates, Joined by the African Americans for Telecommunications Equity, Asian Pacific Bell American Community Partnership, Asian Pacific Bell Islanders California Action Network, Hispanic Association on Corporate Responsibility, Los Angeles Urban League, Universal Service Alliance, and World Institute on Disability. Pursuant to an April 30, 1997 ruling by ALJ Kim Malcolm, ORA filed a reply to the responses. On May 20, 1997, TURN also filed a motion for leave to file a reply and a reply to the responses to its application for rehearing.

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With respect to the CPC, which is central to parties' concerns, Pacific Bell pledges: 1) the formation of the "Community Technology Fund," funded by Pacific Bell over ten years with up to \$50 million to promote access to advanced telecommunications services in communities that have hitherto been under-served by Pacific Bell and presumably other telecommunications companies, 2) an annual increase in Pacific Bell's charitable contributions of \$1 million, over the 1996 budget, for three years, 3) the continuation of multilingual customer services, 4) a contribution by Pacific Bell of \$100,000 per year for seven years toward the formation of a Universal Service task force to develop methods to promote universal service by working with community groups, 5) the formation of a "Think Tank" to research interests of under-served communities and the general public in the evolving competitive environment, with funding by Pacific Bell up to \$200,000 a year for five years, 6) commitment by Pacific Bell to continue to employ, promote and contract with minorities, women and people with disabilities, 7) a commitment by Pacific Bell to maintain headquarters for Pacific Bell in California and to expand its employment base by at least 1,000 jobs, and 8) a "challenge" grant under which Telesis will contribute up to an additional \$3 million annually for three years after the merger in amounts equal to those offered by other telecommunications providers. (D.97-03-067, pp. 86-87.)

We determined in D.97-03-067 that the activities supported by the CPC will benefit state and local communities and all California ratepayers. We further determined that the goals of the CPC are consistent with our policy to achieve universal service and to better serve disadvantaged and under-served communities in California. We, therefore, included the CPC in our review of the merger application in two ways. First, we recognized the overall benefits of the CPC to the People of the State, and decided that as a condition of approving the merger, Telesis and Pacific Bell were to honor the commitments made in the CPC. (D.97-03-067, Finding of Fact No. 61, Conclusion of Law No. 29, and Ordering Paragraph No. 1b.) Second, we determined that the CPC's Community Technology Fund of \$34 million, intended to address universal service goals